



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

साप्ताहिक

WEEKLY

सं. 1] नई दिल्ली, जनवरी 1—जनवरी 7, 2017, शनिवार/ पौष 11— पौष 17, 1938
No. 1] NEW DELHI, JANUARY 1—JANUARY 7, 2017, SATURDAY/PAUSA 11— PAUSA 17, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए साधारण आदेश और अधिसूचनाएं
Orders and Notifications issued by the Central Authorities (Other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 8 अगस्त, 2016

आ. अ. 1 . — लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 13-कंधामल संसदीय निर्वाचन क्षेत्र के संदर्भ में प्रत्युषा राजेश्वरी सिंह द्वारा दायर की गई निर्वाचन याचिका सं. 2014 की 24 में दिनांक 24.12.2015 के उड़ीसा उच्च न्यायालय, कटक के निर्णय और आदेश को एतद्वारा प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/ईसीआई/पत्र/प्रादेशिक/ईएस-II/उड़ीसा-लोक सभा (24/2014)/2016]

आदेश से,

आर.के. श्रीवास्तव, वरिष्ठ प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 8th August, 2016

O. N. 1 . — In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgement and Order of the High Court of Orissa, Cuttack dated 24.12.2015 in Election Petition No. 24 of 2014 filed by Pratyusha Rajeshwari Singh w.r.t. 13-Kandamal Parliamentary Constituency.

HIGH COURT OF ORISSA: CUTTACK.**Misc. Case No. 16 of 2015****(Arising out of ELPT No. 24 of 2014)**

In the matter of an application under Order VI Rule 16 and Order VII Rule 11 of the Code of Civil Procedure, 1908 read with Section 86 of the Representation of Peoples Act, 1951.

Pratyusha Rajeshwari Singh	Petitioner
Versus		
Sri Rudra Madhab Ray	Opp. Party
For Petitioner	:	M/s. Yashpal Mohanty, P.S. Acharya, Sk. Md. Rehan M/s. Upendra Kumar Samal, P.K.Khuntia, S.S.Swain & M. Mohanty
For Opp. Party	:	M/s. Gopal Agarwal, N. Mohapatra, A.K.Biswal & R. Samal

Date of Judgment: 24.12.2015

PRESENT:**THE HONOURABLE SHRI JUSTICE K.R. MOHAPATRA**

K.R. Mohapatra, J. This is an application filed under the provisions of Order 6 Rule 16 and Order 7 Rule 11 of Code of Civil Procedure, 1908 read with Section 86 of the Representation of Peoples Act, 1951 (for short, 'the Act').

2. Facts in nutshell relevant for appropriate adjudication of this misc. case are as follows:-

As reveals from the case record, on 10.04.2014, the General Election of 13-Kandhamal Parliamentary Constituency (Lok Sabha) was held and the result was declared on 16th May, 2014 declaring Sri Hemendra Chandra Singh (the husband of the Petitioner herein) as Member of Parliament (Lok Sabha). Unfortunately, said Hemendra Chandra Singh breathed his last on 5th September, 2014. Thus, the seat of 13-Kandhamal Parliamentary Constituency (Lok Sabha) fell vacant. As a result, the Election Commission in exercise of power under Section 149(1) read with Sections 30 and 56 of the Act called upon the said Parliamentary constituency to elect a person for filling up the casual vacancy. As per the Gazette Notification, 26th September, 2014 was the last date for filing up of nomination paper. 27th September, 2014 was the date for scrutiny of the nominations and 29th September, 2014 was the last date for withdrawal of the nomination/candidature. 15th October, 2014 was the date of poll and 19th October, 2014 was the date of counting and declaration of result, in which the petitioner was declared elected with a margin over 2,98,868 votes from the opposite party. Assailing the said election, the opposite party herein filed the aforesaid election petition (ELPT No. 24 of 2014) under Sections 80, 84, 100 and 117 of the Act read with provisions of Orissa High Court Rules, 1984 with the following prayers:-

“(A) To declare that the Respondent, Pratyusha Rajeswari Singh is not a citizen of India and has not acquired the citizenship of India having married to Indian citizen Mr. Hemendra Chandra Singh;

(B) To declare that the Respondent Pratyusha Rajeswari Singh is not qualified/disqualified for being chosen as and for being a member of Parliament from 13-Kandhamal Parliamentary Constituency as she is not a citizen of India;

(C) To declare that the election of the Respondent, Pratyusha Rajeswari Singh as elected Member of Parliament of 13-Kandhamal Parliamentary Constituency to be void and set aside the same;

(D) To declare that a casual vacancy has been created so far as it relates to 13-Kandhamal Parliamentary Constituency;

- (E) To direct the appropriate authority to conduct fresh election with respect to 13-Kandhamal Parliamentary Constituency within the time specified and prescribed;
- (F) To call for the nomination papers of Respondent along with all accompanying documents from the custody of Returning Officer, 13-Kandhamal Parliamentary Constituency;
- (G) For costs;
- (H) For any other relief or reliefs to which the petitioner is entitled to under law.”

3. By order dated 18.12.2014, this Court directed for issuance of notice on admission in the election petition. On appearance, the petitioner filed this misc. case with a prayer to strike out/delete paragraphs-5 to 12 of the election petition as well as to reject the election petition on the ground stated therein. It is contended, inter alia, that the submissions and allegations made in the election petition do not make out any ground for challenge as contemplated under Section 100 of the Act and the allegations made in the election petition are not in conformity with Section 83 of the Act. It is further stated that the averments made in the election petition do not disclose the manner in which the result of the election has been materially affected. The election petition also does not disclose the material fact as contemplated under Section 83(1)(a) of the Act. Since the averments made in the election petition do not constitute a complete cause of action, the election petition is bad. The allegations made in paragraphs- 6 to 11 of the election petition are completely bald, vexatious, frivolous and scandalous, and hence the same are liable to be struck out from the pleadings. The petitioner stated inter alia that she was born at Ranchi on 29.11.1971 and her mother was born in 1950 at Indore.

Thus, both of them are citizens of India by birth. After marriage, the parents of the petitioner decided to reside in India permanently with intention to make India as their home and accordingly, they settled at Ranchi. Accordingly, father of the petitioner came to India in the year 1969 and were staying at Burdwan Compound, Lalpur, Ranchi. The petitioner completed her higher studies from Daly College, Indore, MP and Bachelor of Arts Degree from Maharsi Dayananda Saraswati University, Ajmer in the year 1994. Thereafter, she was staying at Indore when she got married to said Hemendra Chandra Singh on 26.11.1998. The petitioner also contended that the allegation in the election petition raising question of her citizenship is bald and not supported by any material. Thus, the allegation to that effect is liable to be struck out from the pleadings. She specifically stated in the petition that she has been granted Passport by the Passport authority of India. Similarly, license for arms and ammunition has been granted by the appropriate authority under the provisions of Arms Act, 1959 and Arms Rules, 1962 in her favour. She has been enrolled as an elector at Ranchi as per the provisions of the Act and after her marriage she has been enrolled in the electoral roll of Nayagarh district in the State of Odisha. She is an income tax assessee and her Permanent Account number is AVIPS5749P. The petitioner further contended that the allegations made questioning her citizenship are unnecessary, scandalous, vexatious and frivolous which would tend to prejudice and embarrass her and cause delay in fair trial of the election petition. The same would otherwise occasion in abuse of process of Court. The election petition has been filed with speculative information and information based on surmises and conjectures. Neither any documents nor any material has been filed in support of that claim nor reference to any documents or materials is given in the election petition in support of the claim questioning the citizenship of the petitioner. Thus, the relief sought for in the election petition cannot be granted. The opposite party in the verification as well as in the affidavit appended to the election petition affirmed that he received information with regard to citizenship of the petitioner from one Mr. Lalitendu Pattnaik, a co-villager of the opposite party. But, the source or special means of knowledge of said Lalitendu Pattnaik has not been stated; hence, the entire averments with regard to citizenship of the petitioner are bald, vexatious and frivolous. The opposite party has not challenged registration of the petitioner as an elector/voter of Nayagarh, Odisha which has been prepared in conformity with the provisions of the Act. Hence, the question of citizenship of the petitioner cannot be adjudicated in an election petition as there is no cause of action. When no objection was raised with regard to citizenship of the petitioner at the time of scrutiny of nomination, the election petition is incompetent to be entertained on the said plea. When a special statute, i.e., Citizenship Act, provides determination of question with regard to citizenship, the said issue with bald allegation without any supportive documents and materials cannot be raised in an election petition. The petitioner further contended that the election petition is bad for non-disclosure of complete material facts as well as cause of action and hence, the same is liable to be rejected in exercise of power under Order 7 Rule 11, CPC.

4. The opposite party filed objection to the misc. case refuting the allegations made therein. The opposite party contended that the petition is not maintainable both in fact and law. The same has been filed to delay the fair trial of the election petition. The petition is misconceived and thus, the same is liable to be dismissed. It is contended therein that the opposite party has filed the election petition on the ground that the petitioner as on the date of election was disqualified to be chosen and for being a member to the House of People as she is not a citizen of India. The election petition has been presented in conformity with the provisions of Sections 81 to 84 read with Section 117 of the Act as well as on the ground spelt out in Section 100 of the Act read with Orissa High Court Rules, 1948. It is specifically averred in the objection that all the facts necessary to formulate the cause of action have been stated in the election petition and concise statement of all the material facts on which the opposite party relies, have been furnished in conformity with the requirement under Section 83(1) (a) of the Act. In the event it is felt necessary during adjudication

of the election petition that some particulars are lacking, then also this Court can direct the opposite party to furnish such particulars by way of amendment or to modify the election petition for ensuring a fair and effective trial of the same as envisaged under Section 86(5) of the Act. The election petition does not disclose a single statement which could be construed as unnecessary or scandalous or frivolous or without details or vexatious or tend to prejudice the parties in fair trial of the election petition. It appears from the averments made in the petition that the petitioner wants that the opposite party should also state the evidence in the election petition which is contrary to the provisions of law. The opposite party has come up with a specific case that the petitioner is not a citizen of India and as such, she is disqualified to contest the election. The Court has ample jurisdiction to try and decide the said question of citizenship in the election petition. Hence, the allegation made in the petition to that effect is vague. The opposite party has come up with a properly constituted election petition in conformity with the provisions of the Act and hence the same is not liable to be rejected under Order 6 Rule 16 read with Order 7 Rule 11, CPC. The opposite party further submitted that he has stated all material facts to disclose the complete cause of action which can only be gone into at the time of trial. Hence, the election petition should not be nipped at the bud. Thus, he prayed for dismissal of this petition with cost.

5. In order to substantiate their respective case, Mr.U.K.Samal, learned counsel for the petitioner and Mr.G.Agrawal, learned counsel for the opposite party advanced their respective arguments at length relying upon various case laws of Hon'ble Supreme Court as well as this Court in support of their cases.

6. Taking into consideration the rival pleadings of the parties, it is to be determined as to whether the question of citizenship of a candidate can be gone into in an election petition and whether the election petition discloses all material facts which give rise to a complete cause of action.

7. The sole allegation of the opposite party in the election petition is that the petitioner is not a citizen of India. Learned counsel for the petitioner contended that the question of citizenship of a candidate cannot be gone into in an election petition. In order to substantiate his argument, Mr. Samal relied upon different provisions of the Constitution of India and the Act. Article 84 of the Constitution of India provides qualification for Membership of Parliament, relevant portion of which reads thus:-

“84. Qualification for membership of Parliament.

A person shall not be qualified to be chosen to fill a seat in Parliament unless he-

- (a) is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule.....”

Article 102 of Constitution of India provides disqualification of membership in the House of Parliament. The same is reproduced hereunder:-

“102. Disqualification's for membership.

A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-

- (a) xx xx xx
(b) xx xx xx
(c) xx xx xx

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation-

xx xx xx

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.”

Section 4 of the Representation of Peoples Act, 1951 provides qualification for membership of the House of People, which reads as follows:-

4. Qualifications for membership of the House of the People.— A person shall not be qualified to be chosen to fill a seat in the House of the People unless—

- (a) xx xx xx
(b) xx xx xx
(c) xx xx xx
(d) in the case of any other seat, he is an elector for any Parliamentary constituency.”

8. The disqualification of membership of Parliament and State Legislatures has been elaborately provided in Section 7 to 11 (b) of the Act. However, the disqualification enumerated therein is not applicable to the case at hand.

Section 3 of the Citizenship Act, 1955 provides that:-

“3. Citizenship by birth.—

- (1) Except as provided in sub-section (2), every person born in India,—
 - (a) on or after the 26th day of January, 1950 but before the 1st day of July, 1987;
 - (b) xx xx xx;
 - (c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where—
 - (i) both of his parents are a citizen of India; or
 - (ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.
- (2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—
 - (a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or
 - (b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.”

Section 13D of the Representation of People Act, 1950

Provides that:-

13D. Electoral rolls for parliamentary Constituencies.—(1) The electoral roll for every parliamentary constituency, other than a parliamentary constituency in the State of Jammu and Kashmir or in a Union territory not having a Legislative Assembly, shall consist of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency:

Provided that for the period referred to in clause (2) of article 371A, it shall be necessary to prepare and revise separately the electoral roll for that part of the parliamentary constituency of Nagaland which comprises the Tuensang district and the provisions of Part III shall apply in relation to the preparation and revision of the electoral roll of the said part as they apply in relation to an assembly constituency.

(2) The provisions of Part III shall apply in relation to every parliamentary constituency in the State of Jammu and Kashmir or in a Union territory not having a Legislative Assembly as they apply in relation to an assembly constituency.”

9. Section 16 of the Representation of People Act, 1950 provides the grounds on which a person shall be disqualified for registration in an electoral roll, which reads as follows:

“16. Disqualifications for registration in an electoral roll.— (1) A person shall be disqualified for registration in an electoral roll if he— (a) is not a citizen of India; or

(b) is of unsound mind and stands so declared by a competent court; or

(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included:

Provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under clause (c) of sub-section (1) shall forthwith be re-instated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorising such removal.”

10. Referring to the aforesaid provisions of law, Mr. Samal, learned counsel for the petitioner submits that question of disqualification under Article 102 of the Constitution of India relating to status of returned candidate regarding his/her citizenship in India cannot be called in question in a petition presented under Section 81 of the Act. Whether a candidate is a citizen or has acquired disqualification of citizenship can only be decided by the Central Government as per the provisions of the Citizenship Act, 1955 and rules framed thereunder. The question of citizenship of a candidate can only be gone into in a properly constituted election petition where there is already a declaration regarding status of a person as to whether he/she is a citizen of India or he/she has disqualified as an Indian citizen. In the case at hand, no such declaration having been made as envisaged under Section 13 of the Citizenship Act, 1955 the question of citizenship of the petitioner cannot be gone into in the election petition. Thus, the opposite party has no cause of action to file the election petition. In support of his case, he relied upon a decision of the Hon'ble Supreme Court in the case of *Bhagwati Prasad Dixit 'Ghorewala' Vs. Rajeev Gandhi*, reported in (1986) 4 SCC 78, wherein the Hon'ble Supreme Court held as under:-

“7. In exercise of the powers conferred by clause (h) of sub section (2) of section 18 of the Citizenship Act, 1955 and sub-section (2) of section 9 of that Act of the Central Government has framed rules to decide the question of voluntary acquisition of citizenship of a foreign country and the consequent determination of the citizenship of India. By rule 30 of the Citizenship Rules, 1956, the Central Government is appointed as the authority to decide such question. Schedule III of the Citizenship Rules, 1956 contains the rules of evidence applicable to a case arising under section 9(2) of the Citizenship Act, 1955. No other Court or authority has the power to decide the question as to whether, when or how an Indian citizen has acquired the citizenship of another country. Even where the question whether a person is qualified to be chosen as a member of the Lok Sabha arises in an election petition filed under the Representation of the People Act, 1951, the High Court cannot proceed to decide the question of loss of citizenship of the candidate concerned. It cannot be held that the Citizenship Act, 1955 should yield in favour of the Representation of the People Act, 1951 only because the latter Act is enacted pursuant to Article 327 of the Constitution. As mentioned earlier the Citizenship Act, 1955 is also a law made by Parliament by virtue of Article 11 of the Constitution read with Entry 17 of List I of the Seventh Schedule to the Constitution.”

He further submitted that only the irregularities and impropriety in granting certificate under Section 13 of the Citizenship Act, 1955 can be gone into in an election petition. To substantiate his contention, he relied upon a decision of the Hon'ble Supreme Court in the case of *Hari Shankaer Jain Vs. Sonia Gandhi*, reported in (2001) 8 SCC 233, wherein the Hon'ble Supreme Court held as under:-

“20. Thus, looking at the scheme of the Citizenship Act, as also the judicial opinion which has prevailed ever since the enactment of Citizenship Act, 1955, we are unhesitatingly of the opinion that in spite of a certificate of registration under Section 5(1) (c) of Citizenship Act, 1955 having been granted to a person and in spite of his having been enrolled in the voters list, the question whether he is a citizen of India and hence qualified for, or disqualified from, contesting an election can be raised before and tried by the High Court hearing an election petition, provided the challenge is based on factual matrix given in the petition and not merely bald or vague allegations.” In the case of *Bhagawati Prasad Dixit 'Ghorewala' (supra)*, the question was raised with regard to the alleged acquisition of citizenship of Italy by Rajiv Gandhi and the Hon'ble Supreme Court while answering the issue in the negative held that the question of alleged disqualification can only be gone into by the Central Government. In the case of *Hari Shanker Jain (supra)*, the Hon'ble Supreme Court opined that the question whether a person is a citizen of India and hence qualify for, or disqualify from, contesting an election can be raised before and tried by the High Court in the election petition, provided the challenge is based on factual matrix given in the petition and not merely on bald and vague allegations. Mr. Samal relying on the aforesaid decisions submitted that in the case at hand, there is no pleading to the effect that the petitioner was granted and/or refused a certificate on citizenship by the competent authority and thus, the question of legality and propriety of a certificate of citizenship, if any, as dealt in the aforesaid reported decisions, does not arise in the instant case. He further submitted that once the name of the petitioner registered in the electoral roll, a presumption under Section 114 (e) of the Evidence Act arises and unless the said electoral roll is revised or modified and the said presumption is proved otherwise in court of law, the petitioner shall continue to be the citizen of India. In support of his case, he relied upon a decision of the Hon'ble Supreme Court in a batch of cases of *Lal Babu Hussein and others Vs. Electoral Registration Officer and others*, reported in (1995) 3 SCC 100, wherein, at paragraph 6, it is held as under:-

“6. From the resume of the aforementioned provisions of the Constitution and the Citizenship Act, it becomes clear that whenever any authority is called upon to decide even for the limited purpose of another law, whether a person is or is not a citizen of India, the authority must carefully examine the question in the context of the constitutional provisions and the provisions of the Citizenship Act extracted hereinbefore. In the instant case Article 325 of the Constitution provides for one general electoral roll for every territorial constituency; so does Section 15 of the 1950 Act. This has to be done under the superintendence, direction and control of the Election Commission as per the mandate of Article 324 of the Constitution. Section 16 of the 1950 Act in terms states that a person shall be disqualified for registration in an electoral roll if he is not a citizen of India. Put positively, a person must be a citizen of India to be entitled to inclusion in the electoral roll. Sub-section (2) of the said section empowers striking off the name of a person who incurs a disqualification set out in clauses (a), (b) or (c) of sub-section (1) after his name is entered in the register of electoral rolls. Otherwise every person who is not less than 18 years of age on the qualifying date and is ordinarily resident in a given constituency is entitled to be registered. Section 22 empowers the Electoral Registration Officer for a constituency to delete any entry already made if on enquiry he is satisfied that it is erroneous or defective in any particular or needs to be transposed to another place in the roll or the person concerned has died or has ceased to be ordinarily resident in that constituency or that he is otherwise not entitled to be registered. Of course before any such action is taken the person concerned, except in the case of death, must be given an opportunity to be heard. Similar is the provision in Rule 21-A of the 1960 Rules which empowers the Registration Officer before final publication of the roll to delete the name or names of any person or persons which have been entered owing to inadvertence or error if the person concerned is dead or has ceased to be ordinarily resident in that constituency or is otherwise not entitled to be registered. The procedure for exercise of the said power is set out therein and conforms to the requirements of the principles of natural

justice. It is obvious from the above that two situations arise; the first where the name is to be entered on the rolls for the first time and the second where the name already entered is required to be deleted. In the first mentioned situation before the name is entered on the rolls, the officer concerned must be satisfied that the person seeking to have his name entered is not disqualified by reason of his not being a citizen of India. Therefore, he would be justified in requiring the person concerned to show evidence that he is a citizen of India. In the second situation, since the name is already entered, it must be presumed that before entering his name the officer concerned must have gone through the procedural requirements under the statute. This would be so even if we invoke Section 114 (e) of the Evidence Act. But then possibilities of mistakes cannot be ruled out. These mistakes, if any, would have to be corrected. Even if we are to assume (without deciding) that the words “is otherwise not entitled to be registered in that roll” used in Section 22 of the 1950 Act or Rule 21-A of the 1960 Rules are wide enough to cover the question relating to citizenship, the issue would have to be decided after giving the person concerned a reasonable opportunity of being heard. If the opportunity of being heard before deletion of the name is to be a meaningful and purposive one, it goes without saying that the person concerned whose name is borne on the roll and is intended to be removed must be informed why a suspicion has arisen in regard to his status as a citizen of India so that he may be able to show that the basis for the suspicion is ill-founded. Unless the basis for the doubt is disclosed, it would not be possible for the person concerned to remove the doubt and explain any circumstance or circumstances responsible for the doubt.”

He also placed reliance upon a decision of the Hon'ble Supreme Court in the case of *Shyamdeo PD. Singh Vs. Nawal Kishore Yadav*, reported in (2000) 8 SCC 46, wherein, the Hon'ble Supreme Court held that irregularities in preparing electoral roll by including persons not qualified for being enrolled as voter, cannot constitute a ground under Sections 100 (1)(d)(iii) and (iv) of the 1951 Act for avoiding election. Thus, Mr. Samal with vehemence submitted that the prayer in the election petition declaring her to be not a citizen of India cannot be entertained by this Court.

Mr. Samal further submitted that the opposite party has not challenged the registration of the petitioner as an elector/voter of Nayagarh district in Odisha. Hence, the question of citizenship of the petitioner cannot be adjudicated in an election petition.

11. Mr. Agarwal, on the other hand, refuting the contentions of Mr. Samal submitted that the question as to whether a person suffers from any disqualification can always be gone into by the court trying an election petition and the electoral role is not conclusive or final in the matter of citizenship of a person as held by a Constitutional Bench of the Hon'ble Supreme Court in the case *Hari Prasad Mulshanker Trivedi Vs. V.B.Raju*, reported in (1974) 3 SCC 415 and subsequently followed in the case of *Shyamdeo PD. Singh (supra)*. He further relied upon the decision in the case of *Hari Shanker Jain (supra)* and referring to paragraph- 7 of the said decision submitted that the vires of any law may be put in issue by either party to an election petition before the High Court and the High Court can adjudicate upon such an issue if it becomes expedient to do so for the purpose declaring an election to be void under Section 100 and for the purpose of making an order in conformity with Sections 98 and 99 of the Act, 1951. The only restriction on the power of the High Court, as spelt out by clause (a) of Article 329 of the Constitution, is that the validity of any law relating to the delimitation of constituency or allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, cannot be called in question. Referring to paragraph-11 of the said decision, Mr. Agarwal submitted that the opposite party is laying challenge to the correctness of the entitlement of the petitioner to be registered as a citizen of India under Section 5(1)(c) of the Act. Such a question is not immune, by the scheme of the Citizenship Act, 1955, from being adjudicated upon by an appropriate forum other than Central Government.

Mr. Agarwal also drew attention of this Court to paragraph-16 of the said decision, which reads thus:-

“16. Preparation and revision of electoral rolls is governed by the Representation of the People Act, 1950 (RPA, 1950, for short). Section 16 of RPA, 1950 provides, inter alia, a person shall be disqualified for registration in an electoral roll if he is not a citizen of India. In *Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav*, (2000) 8 SCC 46, a subtle distinction was drawn between disqualification for registration and not being qualified for enrolment in electoral roll and the consequences flowing from the two concepts while deciding the question of finality and conclusiveness attaching to the electoral roll.

This Court held:-

The electoral roll is to be deemed final and conclusive as far as the fulfilment of qualification of a voter is concerned but it is not to be deemed final and conclusive by the Election Tribunal so far as the disqualifications attaching to such persons are concerned. An entry in the electoral roll has to be taken to be conclusive proof of the fact that the person fulfils the requisite conditions as to age and residence in the constituency; finality has been given to the decision of the officer preparing the roll insofar as the fulfilment of conditions of registration is concerned but it has not been considered desirable to extend the same finality to the decision on the subject of disqualification as the latter is more serious matter.”

He also placed reliance on paragraph-19 of the said judgment which reads as follows:-

“19. Sub-section (7) of Section 36 of RPA, 1951 dealing with scrutiny of nomination paper by the Returning Officer itself provides that for the purpose of this section, a certified copy of an entry in the electoral

roll shall be conclusive evidence of the person being an elector for that constituency unless it is proved that he is subject to a disqualification mentioned in Section 16 of the Representation of the People Act, 1950. It is, therefore, clear that if a person is alleged to be not a citizen of India and, therefore, suffering from absence of qualification under Article 84 as also a positive disqualification under Article 102 of the Constitution, then the case is one which attracts applicability of Section 100(1)(d)(iv) of RPA, 1951 and such an issue can be tried by the High Court in an election petition in spite of the returned candidate being enrolled in the voters list for it will be a case of alleged non-compliance with the provisions of Constitution.”

12. In view of the decisions relied upon by learned counsel for the parties and arguments advanced, it leaves no room for confusion that inclusion of the name of a candidate in the electoral roll gives a finality to the fulfilment of requirement/qualification of a voter is concerned, but it cannot be deemed to be final and conclusive in respect of a candidate by the Election Tribunal, for being chosen and/or being elected as a member in the House of People. Thus, the absence of disqualification as enumerated under Article 84 so also the disqualification as spelt out under Article 102 of the Constitution of India attracts the applicability of Section 100(1)(d)(iv) of the Act and such an issue can be tried by the High Court in an election petition in spite of the fact that the returned candidate is enrolled in the voter list of the constituency. The only exception is that the allegation/challenge must be based on all material facts with positive assertions which constitutes the basis of such allegation/challenge and not merely on bald and vague allegations.

13. Thus, the next question arises for consideration is whether the election petition discloses the concise statement of material facts which gives rise to a complete cause of action as required under Section 83(1)(a) of the Act, 1951. Section 83(1)(a) of the Representation of People Act, 1951 reads as follows:-

“83(1)(a) Contents of petition.—An election petition— shall contain a concise statement of the material facts on which the petitioner relies;”

In the case of *Mulayam Singh Yadav Vs. Dharmpal Yadav & Ors.*, reported in (2001) 7 SCC 98, the Hon’ble Supreme Court at paragraph-14 held that requirement of Section 83 is mandatory in nature. Non-compliance of the requirement is attached with the penalty on dismissal under Section 86 of the Act. Further, the words ‘material facts’ as held in the case of *Samant N. Balakrishna etc. vs. George Fernandez and Ors.*, reported in AIR 1969 SC 1201, is the fact which is necessary to formulate a complete cause of action. Omission of a single material fact leads to an incomplete cause of action which makes the statement of claim bad. In addition to the above, in a number of decisions including the case of *Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar*, reported in (2009) 9 SCC 310, the Hon’ble Supreme Court held as under:-

“58. There is no definition of “material facts” either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as “material facts”. All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. “Material facts” in other words mean the entire bundle of facts which would constitute a complete cause of action. This Court in *Harkirat Singh case* tried to give various meanings of “material facts”. The relevant para 48 of the said judgment is reproduced as under: (SCC pp. 526-27)

“48. The expression ‘material facts’ has neither been defined in the Act nor in the Code. According to the dictionary meaning, ‘material’ means ‘fundamental’, ‘vital’, ‘basic’, ‘cardinal’, ‘central’, ‘crucial’, ‘decisive’, ‘essential’, ‘pivotal’, ‘indispensable’, ‘elementary’ or ‘primary’. [*Burton’s Legal Thesaurus* (3rd Edn.) , p. 349.] The phrase ‘material facts’, therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, ‘material facts’ are facts upon which the plaintiff’s cause of action or the defendant’s defence depends. What particulars could be said to be ‘material facts’ would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.”

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61. The legal position has been crystallised by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are “material facts” which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act.”

Thus, the rival contentions of the parties have to be scrutinized on the basis of the ratio decided in the aforesaid cases.

14. Mr. Samal, learned counsel for the petitioner submits that in paragraph-5 of the election petition, the opposite party has stated that the concise statement of facts as required under Section 83(1)(a) of the Act has been pleaded in paragraphs-6 to 11 of the election petition. Further, in the verification as well as the affidavit, the opposite party on oath states that the statement made in paragraphs-6 to 11 of the election petition are the details of facts alleged about the disqualification of the petitioner to be chosen as and for being a member of the House of People as she is not a citizen of

India. He further submits that the statements made in paragraphs- 6 to 11 are bald, vague, vexatious and scandalous. In course of his argument, he refers to paragraphs- 8 and 9 of the election petition. The same is reproduced herein below:-

“8. That the respondent Pratyusha Rajeswari Singh, a citizen of Nepal having married to Mr. Hemendra Chandra Singh does not acquired Indian citizenship at all and is not a citizen of India. So she is not qualified to be chosen to fill a seat in Parliament so also she is disqualified for being chosen as and for being a member of the house of the people (Lok Sabha) under Article 84 and 102 of the Constitution of India. Thus the result of the election declared on 19.10.2014 so far as it concerns the returned candidate/ respondent has been materially affected for non-compliance with the provisions of Article 84 and 102 of the Constitution of India. Therefore the result of Bye-election declared on 19.10.2014 declaring the respondent to have been elected from 13-Kandhamal Parliamentary Constituency in the State of Odisha to the House of the people be declared void and set aside the same.

9. That, after the nomination and after publication of list of contesting candidates by the Returning Officer, the Election petitioner on 2nd October, 2014 came to know from one of the co-villager of the Respondent namely Lalitendu Pattnaik S/o. Late Rasanand Pattnaik of Nayagarh that the Respondent is not a citizen of India and thus disqualified for being chosen as and for being a member of House of the People under Article 102 of the Constitution of India. The petitioner believes that the above Informations given by the said Lalitendu Pattnaik is correct and true. The election petitioner thereafter also made enquiries from other co-villagers and came to know that the information given by Mr. Lalitendu Pattnaik that the Respondent is a citizen of Nepal and has not acquired the citizenship of India is believable and appears to be true.”

Thus, he submitted that the specific assertion in the election petition is that the present petitioner has not acquired citizenship of India having married to Hemendra Chandra Singh. Further, in the election petition, it is specifically pleaded at paragraph-9 that after nomination and after publication of list of contesting candidates by the Returning Officer, the opposite party on 2nd October, 2014 came to know from one of the co-villagers of the petitioner, namely, Lalitendu Pattnaik, son of late Rasananda Pattnaik that she (the petitioner) is not a citizen of India and thus disqualified for being chosen and for being a member of the House of People under Article 102 of the Constitution of India. Thus, it is apparent that the opposite party had no direct knowledge about the so-called disqualification of the petitioner. He only came to know about the same from one co-villager, namely, Lalitendu Pattnaik. Mr. Samal strenuously urged that neither the identification of said Sri Lalitendu Pattnaik is clear from the pleadings nor the source of the knowledge of said Lalitendu Pattnaik is pleaded in the election petition. The pleading is conspicuously silent about the endeavour of the opposite party to test the veracity of the information provided by said Lalitendu Pattnaik. Thus, the entire pleading which is based on the so-called information of one Lalitendu Pattnaik is bald, vague, vexatious and based on no material. The same is also scandalous being without any basis. In support of his case, he relied upon para 20 of the judgment in the case of *Hari Shanker Jain (supra)* which has already been set out hereinbefore.

15. Mr. Samal further submitted that inclusion of name of the petitioner in the electoral roll gives a presumption that the petitioner is a citizen of India as it is one of the requirements to be satisfied for being included in the electoral roll. The opposite party has not challenged the entry of name of the petitioner in the electoral roll. Thus, the presumption attached to the electoral roll to the effect that the petitioner is a citizen of India, prevails. Relying upon paragraphs- 30 and 32 of the decision in the case of *Hari Shankar Jain (supra)*, Mr. Samal submitted that since the entry in the electoral roll has not been challenged and the source of knowledge of Lalitendu Pattnaik regarding the so-called disqualification of the petitioner as stated in the election petition, is not clear and specific, the allegations made in the election petition can only be said to be vague and bald without support of any material facts. The opposite party after losing election has made such allegations without taking proper care to find out the truth in it before filing the election petition. Mr. Samal further submitted that Section 13 of the Citizenship Act provides that any doubt with regard to citizenship of a person can only be clarified by the appropriate authority, i.e., the Central Government by obtaining certificate to that effect. There is no whisper about the diligence or endeavour of the opposite party in obtaining a certificate regarding the citizenship status of the petitioner as required under Section 13 of the Citizenship Act. Thus, it can be safely said that the opposite party has not at all made any enquiry and endeavour to find out with regard to so-called disqualification of the petitioner before filing of the election petition. Non-disclosure of the aforesaid material facts makes the election petition guilty of non-disclosure of all material facts which has resulted in giving rise to incomplete cause of action. Thus, relying on the decision of the Hon'ble Supreme Court in the case of *Jyoti Basu & Others vs Debi Ghosal & Others*, reported in (1982) 1 SCC 691, Mr. Samal submitted that the right to elect, to be elected and to dispute an election are neither fundamental right nor common law right, but simple statutory right and therefore subject to the statutory limitation. He further submitted that it is the trite law that election of a returned candidate should not be lightly interfered with unless there is infraction of law as well as a strong case is made out which materially affects the election and thus warrants interference with the election. In that view of the matter, Mr. Samal submitted that pleadings made in paragraphs- 5 to 16 of the election petition should be struck out and the election petition should be rejected.

16. Mr. Agarwal, learned counsel for the opposite party referring to Section 83(1)(a) of the Act submitted that election petition must contain the concise statement of material facts on which the petitioner relies. It is also the requirement of Section 83(1)(c) of the Act that the election petition shall be signed by the petitioner and verified in the manner as laid down in the Code of Civil Procedure for verification of the pleadings. He further submitted that the averments of the petitioner in the misc. case to the effect that the grounds of challenge in the election petition do not come within the

scope and ambit of Section 100 of the Act. The misc. case is filed with an intention to delay the fair trial of the election petition. Relying upon a decision of the Hon'ble Supreme Court in the case of *Sathi Vijay Kumar Vs. Tota Singh and others*, reported in 2006 (13) SCC 353, Mr. Agarwal submitted that power of striking off pleadings under Order 6 Rule 16, CPC should be exercised sparingly and with extreme care and circumspection. It cannot also be overlooked that normally a Court cannot direct the parties as to how they are to prepare their pleadings. The Court has to see if the parties have not offended Rules of pleadings by averments or raising workable issue. Relying upon a decision of the Hon'ble Supreme Court in the case of *D.Ramachandran Vs. R.V.Janakiraman and others*, reported in (1999) 3 SCC 267, Mr. Agarwal submitted that it is duty of the Court at such preliminary stage to see as to whether any of the reliefs prayed for can be granted if the averments made in the petition proved to be true. For the purpose of preliminary observation, the averments made in the election petition should be assumed to be true and the Court has to find out as to whether the averments disclose the complete cause of action and a triable case. The Court at such stage cannot probe into the correctness of the facts on the basis of controversy raised in the counter/written statements. A bare perusal of the averments made in the election petition do not disclose that the averments made in the paragraphs- 6 to 16 of the election petition are vitiated by law or any of the defect as enumerated under Order 6 Rule 16, CPC. Hence, the prayer for striking out the pleadings at paragraphs- 5 to 16 of the election petition is not tenable in the eye of law.

It is further submitted that while considering a petition under Order 7 Rule 11, CPC, the Court cannot dissect pleadings in several parts and see as to whether any one of them disclose the cause of action under the Rules. Under the rule, there cannot be a partial rejection to the plaint or the petition. Section 83(1)(a) of the Act mandates that in order to constitute a cause of action and material fact, the basic and preliminary facts which the petitioner is bound under law to substantiate in order to succeed have to be pleaded in an election petition. Facts which are essential to disclose a complete cause of action are material facts and are essentially required to be pleaded. Thus, the prayer to reject the election petition under Order 7 Rule 11, CPC has to be considered on the aforesaid cardinal principle. Relying upon a decision of the Hon'ble Supreme Court in the case of *H.D.Revanna Vs. G.Puttaswamy Gowda and others*, reported in 1999(2) SCC 217, Mr. Agarwal submitted that the test in such cases is to see whether any reliefs prayed for could be granted to the petitioner if the averments made in the petition are proved to be true. If the answer to the question is in affirmative, the election petition has to be held maintainable. Whether the averments made in the election petition can be treated to be material facts would always depend upon the facts of each case and no rule or universal application can be laid down. Since the opposite party has made averments in conformity with the provisions under Section 83(1)(a) of the Act read with Order 6 Rule 2 of CPC and the averments made disclose a complete cause of action subject to proving the same in the trial, the election petition cannot be rejected at the threshold. Relying upon the decision of the Hon'ble Supreme Court in the case of *Church Of North Of India vs Lavajibhai Ratanjibhai & Ors.*, reported in (2005) 10 SCC 760, it is the submission of Mr. Agarwal that for the purpose of determining as to whether the plaint discloses a complete cause of action, the Court must take into consideration the plaint as a whole. It is only after such an exercise being undertaken the plaint does not reveal a complete cause of action, the Court can exercise its power under Order 7, Rule 11, CPC.

17. Mr. Agarwal strenuously urged that the decisions relied upon by Mr. Samal, learned counsel for the petitioner are not applicable to the facts and circumstances of the case and are distinguishable. Refuting the contention of Mr. Samal to the effect that due to non-compliance of the provisions of Order 7 Rule 14, CPC, the election petition is not maintainable. Mr. Agarwal submitted that Section 87 of the Act does not provide any detailed procedure of trial of election dispute by the High Court. It only provides that the provisions of CPC as nearly as may be shall be applicable for trial of the election case subject to the provisions of the Act and Rules framed thereunder. He further submitted that Rule 8 of Orissa High Court Rules, 1948 provides that if the election petition is not dismissed under Section 86 (1) of the Act, summons in Form-'A' shall be issued to the respondents to appear in the High Court on the date fixed to answer claim or claims in the petition and summons shall be for written statement and settlement of issues. This Rules does not speak of filing of documents and list of documents or list of documents as required under Order 7 Rule 14, CPC. Further, Rule 10 of Orissa High Court Rules provides for production of documents which are in possession and power of parties along with list of documents after pleadings in which election petitions are received, on a date to be fixed by the Court trying the election petition. He also referred to several other decisions of the this Court as well as that of Hon'ble Supreme Court and submitted that the election petition should not be nipped at the bud and in order to test the purity of the election a fair trial is necessary, especially when the opposite party (election petitioner) raised substantial question with regard to citizenship of the petitioner (returned candidate). Thus, he prayed for dismissal of the petition being devoid of any merit.

18. It is a trite law that an election petition can be dismissed for non-compliance of the provisions of Sections 81, 82 and 117 of the Act and it may also be dismissed if it satisfies the requirements of Order 6 Rule 16 and Order 7 Rule 11, CPC. Thus, the contentions of the parties should be scrutinized accordingly.

19. Before delving into the pleadings of the election petition, it would be profitable to read few lines of a reported decision in the case of *R.P.Moidutty Vs. P.T.Kunju Mohammad and another*, reported in (2000) 1 SCC 481, wherein the Hon'ble Supreme Court held as under:-

“14. It is basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the courts and that is why the election of a

successful candidate is not to be set aside lightly. A heavy onus lies on the election petitioner seeking setting aside of the election of a successful candidate to make out a clear case for much relief both in the pleadings and at the trial.....”

In the case *Virender Nath Gautam Vs. Satpal Singh*, reported in 2007 (3) SCC 617, the Hon’ble Supreme Court held as under:-

“30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.”

20. The opposite party in the verification as well as in the affidavit appended to the election petition has stated that the statement made in paragraphs 6 to 11 of the election petition are the details of facts alleged about the disqualification of the respondent (the petitioner herein) to be chosen and for being a member of the House of People as she is not a citizen of India and thus, the result of election declared on 19.10.2014 in respect of 13-Kandhamal Parliamentary Constituency so far as it concerns a returned candidate has been materially affected. He also stressed that particulars of such disqualification as alleged in paragraphs 6 to 11 are based on information received by him from Mr. Lalitendu Pattnaik, a co-villager which he believes to be true.

As reproduced above, the averments in paragraph-8 of the election petition disclose that the opposite party (election petitioner) has come to the Court with a definite case that the petitioner (returned candidate) has not acquired citizenship of India having married to Hemendra Chandra Singh. Further, as it appears from the statement made in the verification as well as affidavit of the election petition that the opposite party has no direct knowledge about the disqualification of the petitioner as alleged in the election petition. On a close scrutiny of the election petition itself does not disclose that the opposite party himself made any enquiry or endeavour to test the truthfulness and / or veracity of the information purportedly provided by said Lalitendu Pattnaik. Above all, the election petition does not disclose the special means of knowledge of said Lalitendu Pattnaik about the information he purportedly supplied to the opposite party, which is more fully described in paragraphs 6 to 16 of the election petition. As held in paragraph-8 the case of *D. Ramachandran (supra)* that it is the duty of the Court at the preliminary stage to see as to whether any of the reliefs prayed for can be granted if the averments made in the petition are proved to be true. For the purpose of preliminary objection, the averments should be assumed to be true and the Court has to find out whether those averments made out a cause of action or a triable case or a triable issue as such. Again, the facts which are essential to disclose a complete cause of action are the material facts and are essentially required to be pleaded. Even the case of the opposite party is assumed to be correct to the effect that the petitioner is not a citizen of India by birth and she has not acquired citizenship by virtue of her marriage to Hemendra Chandra Singh, she can acquire the citizenship by virtue of provisions of the Citizenship Act, 1955, more particularly, Sections 3 to 5 of the said Act. In the instant case, the petitioner is admittedly an elector/voter of her constituency. And the registration of the petitioner as a voter of the constituency is not challenged by the opposite party. Section 16 of the RPA Act, 1950 provides disqualification for registration in an electoral roll. Among other grounds, a person shall be disqualified for registration in an electoral roll if he/ she is not a citizen of India. Thus, inclusion of the name of the petitioner in the electoral roll itself raises a reasonable presumption that the petitioner is a citizen of India. There is no positive pleading in the election petition to the effect that the petitioner has never acquired citizenship of India. Moreover, in the case of *Hari Shanker Jain (supra)* it is held in paragraph-20 of the said judgment that “whether he is a citizen of India and hence qualified for, or disqualified from, contesting an election can be raised before and tried by the High Court hearing an election petition, provided the challenge is based on factual matrix given in the petition and not merely bald or vague allegations.”

Again paragraph-30 of the said judgment, it is held as follows:-

“....At no point of time did the petitioners even challenge the inclusion of her name in the electoral roll. Making vague and bald allegations, without giving any material facts, after losing the elections, goes to show that proper care even was not taken before filing the petitions by gathering and stating all material facts.....”

21. Even if the case of opposite party to the effect that the petitioner (returned candidate) has not acquired citizenship of India having married to Hemendra Chandra Singh, is proved, the relief sought for in the election petition cannot be granted in absence of a positive pleading to the effect that she has never acquired citizenship of India. The petitioner could acquire citizenship of India by virtue of provisions envisaged in Sections 3 to 5 of the Citizenship Act, 1955. Thus, it can be safely concluded that the election petition does not disclose all materials facts formulating a complete cause of action. The opposite party has never made any endeavour or enquiry except what is stated in paragraph 9 of the election petition to gather information with regard to citizenship of the petitioner. He has not even made an endeavour to obtain a certificate determining the status of the citizenship of the petitioner under Section 13 of Citizenship Act, 1955 nor has he lodged any complaint with regard to inclusion of the name of the petitioner in the electoral roll. As it reveals from paragraph-9, the opposite party after receiving information from said Lalitendu Pattnaik made enquiries from the other co-villagers and came to know that the information given by said Lalitendu Pattnaik that the petitioner is a citizen of Nepal and has not acquired citizenship of India is believable and appears to be true. Other than that, he has never shown his diligence to confirm the information provided by said Lalitendu Pattnaik. Lack of diligence on the part of the

opposite party has resulted in non-disclosure of all material facts which would have disclosed a complete cause of action.

22. In that view of the matter, even if the averments made in the election petition is presumed to be correct and proved to be true, the relief prayed for cannot be granted to the opposite party. Moreover, the pleadings in the election petition if read as a whole do not give rise to a triable issue. Hence, the election petition is not maintainable for non-disclosure of all material facts and complete cause of action. This Court accordingly in exercise of power conferred under Order 7 Rule 11, CPC read with Section 83(1)(a) of the RPA Act, 1951 has no hesitation to allow the Misc. Case. Accordingly, the election petition stands dismissed. Security deposit is forfeited.

Sd/- K. R. Mohapatra, J

Orissa High Court, Cuttack.

Dated the 24th December, 2015/bks/ss

[No. 82/ECI/LETT/TERR/ES-II/OR-HP(24/2014)/2016]

By Order,

R. K. SRIVASTAVA, Sr. Principal Secy.